

Mar 23, 2020

SEAN F. McAVOY, CLERK

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

VANESSA P.,<sup>1</sup>

Plaintiff,

vs.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 2:19-cv-00253-MKD

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

ECF Nos. 14, 15

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. The parties consented to proceed before a magistrate judge. ECF No. 6. The Court, having reviewed the administrative record and the parties' briefing,

---

<sup>1</sup> To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's  
2 motion, ECF No. 14, and grants Defendant's motion, ECF No. 15.

### 3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
5 1383(c)(3).

### 6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social  
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is  
9 limited; the Commissioner's decision will be disturbed "only if it is not supported  
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a  
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
13 (quotation and citation omitted). Stated differently, substantial evidence equates to  
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
15 citation omitted). In determining whether the standard has been satisfied, a  
16 reviewing court must consider the entire record as a whole rather than searching  
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its  
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,  
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are  
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674  
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an  
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless  
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."  
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's  
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*  
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

#### 9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within  
11 the meaning of the Social Security Act. First, the claimant must be "unable to  
12 engage in any substantial gainful activity by reason of any medically determinable  
13 physical or mental impairment which can be expected to result in death or which  
14 has lasted or can be expected to last for a continuous period of not less than twelve  
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's  
16 impairment must be "of such severity that he is not only unable to do his previous  
17 work[,] but cannot, considering his age, education, and work experience, engage in  
18 any other kind of substantial gainful work which exists in the national economy."  
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to  
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§  
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner  
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),  
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the  
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis  
9 proceeds to step two. At this step, the Commissioner considers the severity of the  
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
11 claimant suffers from “any impairment or combination of impairments which  
12 significantly limits [his or her] physical or mental ability to do basic work  
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
15 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
16 §§ 404.1520(c), 416.920(c).

17 At step three, the Commissioner compares the claimant’s impairment to  
18 severe impairments recognized by the Commissioner to be so severe as to preclude  
19 a person from engaging in substantial gainful activity. 20 C.F.R. §§  
20 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more

1 severe than one of the enumerated impairments, the Commissioner must find the  
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the  
4 severity of the enumerated impairments, the Commissioner must pause to assess  
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),  
6 defined generally as the claimant's ability to perform physical and mental work  
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's  
11 RFC, the claimant is capable of performing work that he or she has performed in  
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).  
13 If the claimant is capable of performing past relevant work, the Commissioner  
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).  
15 If the claimant is incapable of performing such work, the analysis proceeds to step  
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's  
18 RFC, the claimant is capable of performing other work in the national economy.  
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,  
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
5 work, the analysis concludes with a finding that the claimant is disabled and is  
6 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

7 The claimant bears the burden of proof at steps one through four above.  
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to  
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is  
10 capable of performing other work; and 2) such work “exists in significant numbers  
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*  
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

### 13 **ALJ’S FINDINGS**

14 On September 22, 2016, Plaintiff applied both for Title II disability  
15 insurance benefits and Title XVI supplemental security income benefits alleging a  
16 disability onset date of July 31, 2015. Tr. 94, 104, 114, 124, 203-13. The  
17 applications were denied initially and on reconsideration. Tr. 125-28, 130-35.  
18 Plaintiff appeared before an administrative law judge (ALJ) on December 13,  
19 2017, and the hearing was continued to allow Plaintiff to seek representation. Tr.

1 40-49. On May 7, 2018, Plaintiff appeared before an ALJ with her counsel. Tr.

2 50-84. On July 26, 2018, the ALJ denied Plaintiff's claim. Tr. 12-33.

3 At step one of the sequential evaluation process, the ALJ found that Plaintiff  
4 had not engaged in substantial gainful activity since July 31, 2015. Tr. 17. At step  
5 two, the ALJ found that Plaintiff had the following severe impairments: anxiety  
6 disorder, depression, and adjustment disorder. Tr. 17.

7 At step three, the ALJ found that Plaintiff did not have an impairment or  
8 combination of impairments that met or medically equaled the severity of a listed  
9 impairment. Tr. 21. The ALJ then concluded that Plaintiff had the RFC to  
10 perform a full range of work at all exertional levels with the following  
11 nonexertional limitations:

12 [Plaintiff] is limited to unskilled work consisting of simple, routine,  
13 repetitive tasks performed in a static environment that would  
14 experience few, if any, work-related changes; those changes that  
15 might occur would be gradually introduced and explained or  
16 demonstrated. No strict fast paced production or time quotas.  
Frequent, superficial interaction with coworkers and supervisors  
(superficial is defined as no negotiation, arbitration, conflict  
resolution, sales, direction/management of others, or group tasks), and  
incidental to no contact or interaction with the public.

17 Tr. 22.

18 At step four, the ALJ found that Plaintiff was unable to perform any of her  
19 past relevant work. Tr. 26. At step five, the ALJ found that, considering  
20 Plaintiff's age, education, work experience, RFC, and testimony from the

1 vocational expert, there were jobs that existed in significant numbers in the  
2 national economy that Plaintiff could perform, such as production assembler,  
3 industrial cleaner, and hand packager. Tr. 26-27. The vocational expert further  
4 testified that an individual with Plaintiff's vocational profile would be able to  
5 perform jobs that existed in significant numbers in the national economy under two  
6 more restrictive hypotheticals limiting Plaintiff to light and sedentary work with  
7 the same nonexertional limitations outlined in the above RFC. Tr. 27. Under the  
8 light hypothetical, the vocational expert testified that such an individual would be  
9 able to perform the jobs of parts cleaner and electrical accessories assembler. Tr.  
10 27. Under the sedentary hypothetical, the vocational expert testified that such an  
11 individual would be able to perform the jobs of final assembler, table worker, and  
12 semi-conductor bonder. Tr. 27. Therefore, the ALJ concluded that Plaintiff was  
13 not under a disability, as defined in the Social Security Act, from the alleged onset  
14 date of July 31, 2015, though the date of the decision. Tr. 27.

15 On May 23, 2019, the Appeals Council denied review of the ALJ's decision,  
16 Tr. 1-6, making the ALJ's decision the Commissioner's final decision for purposes  
17 of judicial review. *See* 42 U.S.C. § 1383(c)(3).

## 18 ISSUES

19 Plaintiff seeks judicial review of the Commissioner's final decision denying  
20 her disability insurance benefits under Title II and supplemental security income



benefits under Title XVI of the Social Security Act. Plaintiff raises the following issues for review:

1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
2. Whether the ALJ properly evaluated the medical opinion evidence.

ECF No. 14 at 11.

## DISCUSSION

### A. Plaintiff's Symptom Claims

Plaintiff faults the ALJ for failing to rely on clear and convincing reasons in discrediting her symptom claims. ECF No. 14 at 11-13. An ALJ engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. Social Security Ruling (SSR) 16-3p, 2016 WL 1119029, at \*2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted). "The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of

1 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the  
2 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations  
3 omitted). General findings are insufficient; rather, the ALJ must identify what  
4 symptom claims are being discounted and what evidence undermines these claims.  
5 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th 1996); *Thomas v. Barnhart*,  
6 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently explain why it  
7 discounted claimant’s symptom claims)). “The clear and convincing [evidence]  
8 standard is the most demanding required in Social Security cases.” *Garrison v.*  
9 *Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r of Soc. Sec.*  
10 *Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

11 Factors to be considered in evaluating the intensity, persistence, and limiting  
12 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,  
13 duration, frequency, and intensity of pain or other symptoms; 3) factors that  
14 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and  
15 side effects of any medication an individual takes or has taken to alleviate pain or  
16 other symptoms; 5) treatment, other than medication, an individual receives or has  
17 received for relief of pain or other symptoms; 6) any measures other than treatment  
18 an individual uses or has used to relieve pain or other symptoms; and 7) any other  
19 factors concerning an individual’s functional limitations and restrictions due to  
20 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at \*7; 20 C.F.R. §§

1 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in  
2 an individual’s record,” to “determine how symptoms limit ability to perform  
3 work-related activities.” SSR 16-3p, 2016 WL 1119029, at \*2.

4 The ALJ found that Plaintiff’s medically determinable impairments could  
5 reasonably be expected to cause the alleged symptoms, but that Plaintiff’s  
6 statements concerning the intensity, persistence, and limiting effects of her  
7 symptoms were not entirely consistent with the evidence. Tr. 23.

8 *1. Not Supported by Objective Medical Evidence*

9 The ALJ found that Plaintiff’s symptom complaints were not supported by  
10 the objective medical evidence. Tr. 23. An ALJ may not discredit a claimant’s  
11 symptom testimony and deny benefits solely because the degree of the symptoms  
12 alleged is not supported by the objective medical evidence. *Rollins v. Massanari*,  
13 261 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th  
14 Cir. 1991). However, the objective medical evidence is a relevant factor, along  
15 with the medical source’s information about the claimant’s pain or other  
16 symptoms, in determining the severity of a claimant’s symptoms and their  
17 disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),  
18 416.929(c)(2).

19 Here, the ALJ discussed Plaintiff’s alleged symptoms due to anxiety,  
20 depression, and bipolar disorder that she claims cause her to be unable to work.

Tr. 23 (citing Tr. 233). The ALJ cited Plaintiff's reports that her impairments limit her ability to talk, hear, remember, complete tasks, concentrate, understand, follow instructions, and get along with others. Tr. 23 (citing Tr. 247). The ALJ also cited Plaintiff's allegations that she is unable to think more than one-step at a time on a daily basis, her organizational skills are completely gone, she gets overwhelmed trying to do basic things, and she frequently has to stop, regroup, and try again. Tr. 23 (citing Tr. 242). The ALJ highlighted Plaintiff's allegations that trying to decide even basic things like what to make for dinner can send her into a panic attack, she is unable to complete tasks without repeated reminders or help, and she is easily distracted. Tr. 23 (citing Tr. 242, 247). The ALJ noted that in her disability appeals report, Plaintiff reported that her psychological impairments have progressively worsened and continue to affect all aspects of daily living. Tr. 23 (citing Tr. 261). The ALJ observed that Plaintiff testified at the hearing that the primary symptom preventing her from working is the unpredictability of her mental state and ability to function. Tr. 23, 63. The ALJ cited Plaintiff's testimony that since September or October 2015 she has crying spells and difficulty sleeping, and she experiences panic attacks three to four times per week. Tr. 23, 65-66. The ALJ cited Plaintiff's testimony that she is unable to make outgoing phone calls due to anxiety and other issues, she frequently needs help from her mother to complete household chores and care for her children, she does

1 not leave her house unless absolutely necessary, she has problems maintaining  
2 personal hygiene and only showers every three to four days. Tr. 23, 47, 64-65, 71-  
3 72, 78. The ALJ also noted that Plaintiff alleged physical limitations due to  
4 tendonitis in her right ankle, which makes it hard for her to stand or walk for any  
5 length of time and limits the types of shoes she can wear.<sup>2</sup> Tr. 23, 63-64.

6 However, the ALJ found that although Plaintiff had a history of anxiety  
7 disorder, depression, and adjustment disorder, examinations showed mostly normal  
8 findings that did not support her allegations of total disability. Tr. 23-24; *see, e.g.*,  
9 Tr. 308-10 (January 12, 2016: Plaintiff first sought treatment from her primary care  
10 provider approximately six months after the alleged onset date; she reported  
11 postpartum anxiety related to the birth of her son one month earlier; she endorsed  
12 anxiety with severe episodes of agoraphobia and shakiness; on mental status  
13 examination, Plaintiff was alert and oriented, with an anxious mood, full affect,  
14 normal speech, and stable judgment and insight; she was assessed with anxiety);  
15 Tr. 312, 315 (March 29, 2016: Plaintiff established care at Providence Primary  
16 Care South for her anxiety; she reported her anxiety had worsened since the birth

17 \_\_\_\_\_  
18 <sup>2</sup> Plaintiff asserts she is not alleging that she is unable to work due to her physical  
19 problems, but instead is alleging that she is unable to work due to her mental  
20 symptoms and limitations. ECF No. 14 at 11.

1 of her son; upon examination, Plaintiff had a normal mood, affect, behavior,  
2 judgment, and thought content, and a very well organized thought process,  
3 although she became very emotional talking about the negative side effects of  
4 medications); Tr. 365 (April 4, 2016: Plaintiff had an anxious mood and a fearful  
5 and anxious affect, but she was cooperative with good eye contact and normal  
6 psychomotor activity, had normal speech, she was goal directed with organized  
7 and logical thought content, her fund of knowledge was average, her insight and  
8 judgment, attention, and recent and remote memory were intact; her provider noted  
9 her anxiety might be related to hormonal fluctuations after having her baby); Tr.  
10 357, 361 (May 2, 2016 and July 8, 2016: Plaintiff had an anxious mood and a  
11 fearful and anxious affect, but she was cooperative with good eye contact and  
12 normal psychomotor activity, had normal speech, she was goal directed with  
13 organized and logical thought content, her fund of knowledge was average, her  
14 insight and judgment, attention, and recent and remote memory were intact); Tr.  
15 353 (August 8, 2016: Plaintiff had an anxious mood and a fearful and anxious  
16 affect, but she was cooperative with good eye contact and normal psychomotor  
17 activity, had normal speech, she was goal directed with organized and logical  
18 thought content, her fund of knowledge was average, her insight and judgment,  
19 attention, and recent and remote memory were intact); Tr. 325 (October 19, 2016:  
20 Plaintiff reported sleep disturbance, anxiety, depression, and feeling out of control;

1 upon examination she presented as oriented with a normal mood and affect,  
2 although she appeared anxious and cried easily during the visit); Tr. 333  
3 (November 28, 2016: Plaintiff had an appropriate mood and affect); Tr. 349  
4 (January 16, 2017: Plaintiff had an anxious mood and a fearful and anxious affect,  
5 but she was cooperative with good eye contact and normal psychomotor activity,  
6 had normal speech, congruent mood, she was goal directed with organized, logical,  
7 and linear thought content, her fund of knowledge was average, her insight and  
8 judgment, attention, and recent and remote memory were intact); Tr. 342-43  
9 (February 11, 2017: Plaintiff had good eye contact, was congenial, engaging, and  
10 cooperative, she demonstrated coherent, logical, and linear thought process, normal  
11 speech, normal comprehension, she denied auditory and visual hallucinations and  
12 denied having any intent or plan to harm herself or others, she reported that her  
13 mood was “good today,” her affect was normal-appropriate during the majority of  
14 the session, although she became tearful during the mental status examination, she  
15 exhibited no problems with her memory, fund of knowledge, demonstrated good  
16 persistence in attempting tasks and seemed to recognize failures made, and had fair  
17 insight into her overall mental health); Tr. 345 (March 10, 2017: Plaintiff had an  
18 anxious mood, but she was cooperative with good eye contact, had normal speech,  
19 congruent mood, she was goal directed, no abnormal thought content, her insight  
20 and judgment were intact, and her recent and remote memory were intact); Tr. 374

1 (June 14, 2017: Plaintiff reported the medications were “significantly” helping her  
2 anxiety; Plaintiff was assessed with generalized anxiety disorder “doing very well  
3 on current regimen”; upon examination Plaintiff had a normal mood and affect);  
4 Tr. 377, 380 (June 21, 2017 and July 11, 2017: Plaintiff had a normal mood and  
5 affect, her behavior, judgment, and thought content were normal).

6 Further, the ALJ specifically noted that while Plaintiff alleged she was  
7 unable to concentrate or focus, and could not complete even basic tasks without  
8 repeated reminders or help, the psychological examiner reported Plaintiff had no  
9 problems completing the psychiatric evaluation questionnaire, was able to  
10 complete a three-step command, and demonstrated good persistence in completing  
11 tasks. Tr. 338-39, 342-43.

12 Plaintiff disagrees with the ALJ’s findings, and argues that the ALJ  
13 improperly discounted her symptom allegations because “she had some normal  
14 findings during her counseling sessions and during her examination by Dr.  
15 Liddell.” ECF No. 14 at 12. Plaintiff fails to provide any record citations to  
16 demonstrate that the ALJ cherry-picked the record evidence. It is the ALJ’s  
17 responsibility to resolve conflicts in the medical evidence. *Andrews v. Shalala*, 53  
18 F.3d 1035, 1039 (9th Cir. 1995). Where the ALJ’s interpretation of the record is  
19 reasonable as it is here, it should not be second-guessed. *Rollins*, 261 F.3d at 857.  
20 The Court must consider the ALJ’s decision in the context of “the entire record as



1 a whole,” and if the “evidence is susceptible to more than one rational  
2 interpretation, the ALJ’s decision should be upheld.” *Ryan v. Comm’r of Soc. Sec.*,  
3 528 F.3d 1194, 1198 (9th Cir. 2008) (internal quotation marks omitted). Here, the  
4 ALJ reasonably concluded, based on this record, that the objective medical  
5 evidence did not support the level of impairment alleged by Plaintiff. Tr. 23-24.  
6 The ALJ’s finding is supported by substantial evidence and was a clear and  
7 convincing reason, in conjunction with Plaintiff’s failure to report symptoms to  
8 treatment providers, inconsistency with daily activities and childcare activities,  
9 improvement with medication, reasons for stopping work unrelated to her  
10 impairments, and the ability to work with her impairments, *see infra*, to discount  
11 Plaintiff’s symptom complaints.

## 12 2. Failure to Report Symptoms to Treatment Providers

13 The ALJ found that Plaintiff’s symptom testimony was inconsistent with  
14 Plaintiff’s failure to report similar symptoms to her treatment providers. Tr. 24. In  
15 evaluating a claimant’s symptom claims, an ALJ may consider the consistency of  
16 an individual’s own statements made in connection with the disability review  
17 process with any other existing statements or conduct made under other  
18 circumstances. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996); *Thomas*,  
19 278 F.3d at 958-59. Additionally, “[t]he failure to report symptoms to treatment  
20 providers is a legitimate consideration in determining the credibility of those

complaints.” *Leshner v. Comm’r of Soc. Sec.*, No. 2:15-cv-00237-SMJ, 2018 WL 314819, at \*6 (E.D. Wash. Jan. 5, 2018) (citing *Greger v. Barnhart*, 464 F.3d 972, 972 (9th Cir. 2006)). Here, the ALJ noted that despite Plaintiff’s allegations made during her administrative hearing that she has experienced almost daily panic attacks since September or October 2015, and that after a panic attack the rest of the day is shot, Plaintiff did not report this symptom to her providers. Tr. 24, 65-66, 76. The ALJ reasonably concluded, based on this record, that Plaintiff’s symptom allegations in connection with her claim of daily disabling panic attacks were inconsistent with reporting to her treatment providers. This was a clear and convincing reason to discount her symptom complaints.

### 3. *Inconsistent with Daily Activities*

The ALJ found that Plaintiff’s activities were inconsistent with the level of impairment Plaintiff alleged. Tr. 24. An ALJ may consider a claimant’s activities that undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a substantial part of the day engaged in pursuits involving the performance of exertional or nonexertional functions, the ALJ may find these activities inconsistent with the reported disabling symptoms. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. “While a claimant need not vegetate in a dark room in order to be eligible for benefits, the ALJ may discount a claimant’s symptom claims when the claimant reports participation in everyday

1 activities indicating capacities that are transferable to a work setting” or when  
2 activities “contradict claims of a totally debilitating impairment.” *Molina*, 674  
3 F.3d at 1112-13.

4 Here, the ALJ indicated that Plaintiff reported she was unable to work due to  
5 mental health impairments that caused extreme limitations, including difficulty  
6 sleeping, going days without showering, an inability to make phone calls, and  
7 staying at home unless absolutely necessary. Tr. 24, 64-66, 71-72; *see, e.g.*, Tr. 66  
8 (Plaintiff testified, “I lay there and do not fall asleep no matter what I do. I take  
9 [B]enadryl or [X]anax and sometimes it helps, but most of the time, I just get  
10 sleepy and I just lay there. I can’t shut my brain off at all.”); Tr. 243 (Plaintiff  
11 alleged that no matter how exhausted she was, she had an “extremely hard time  
12 falling or staying asleep” because she was unable to shut her mind off); Tr. 72  
13 (Plaintiff testified that she did not keep up on her showering and hygiene,  
14 explaining that she “probably” takes a shower every third or fourth day.”); Tr. 64  
15 (Plaintiff testified, “I don’t make outgoing phone calls. I just can’t do it. I try, but  
16 when I pick up the phone, my voice gets all tight and I don’t make any sense”); Tr.  
17 71 (Plaintiff testified that she does not leave her house unless she absolutely has to,  
18 stating “I don’t leave very often. If I need something, I call my mom and ask her  
19 to do it.”); Tr. 246 (Plaintiff alleged, “I don’t go anywhere”); Tr. 247 (Plaintiff  
20 reported “I never go anywhere anymore.”). The ALJ also highlighted Plaintiff’s

1 allegations that trying to decide even basic things like what to make for dinner can  
2 send her into a panic attack, she is unable to complete tasks without repeated  
3 reminders or help, and she is easily distracted. Tr. 23 (citing Tr. 242, 247).  
4 However, the ALJ noted that Plaintiff engaged in activities that were incompatible  
5 with the extreme limitations alleged. Tr. 24. For example, Plaintiff reported that  
6 she sleeps five to seven hours per night, cares for her own personal hygiene,  
7 sweeps, mops and, vacuums every other day, cleans dishes multiple times per day,  
8 cleans, folds, and puts away laundry once a week. Tr. 24 (citing Tr. 341). Further,  
9 Plaintiff told the psychological examiner that she drives “whenever it is needed,”  
10 prepares meals twice a day, and shops for groceries and clothing weekly. Tr. 24  
11 (citing Tr. 341). The ALJ also noted that Plaintiff told the psychological examiner  
12 she was able to use the telephone as needed, which was inconsistent with her  
13 claims at the hearing. Tr. 24 (citing Tr. 341). The ALJ reasonably concluded that  
14 these activities were inconsistent with the debilitating level of impairment Plaintiff  
15 alleged. Tr. 24.

16 Plaintiff challenges the ALJ’s finding by asserting that she could only  
17 occasionally perform these activities. ECF No. 14 at 12-13. An ALJ may discount  
18 a claimant’s symptom claims when the claimant reports participation in everyday  
19 activities that “contradict claims of a totally debilitating impairment.” *Molina*, 674  
20 F.3d at 1112-13. Here, the ALJ identified Plaintiff’s specific alleged impairments

1 and noted specific activities that indicated Plaintiff was less limited than she  
2 alleged. Tr. 24. This was a clear and convincing reason to give less weight to  
3 Plaintiff's subjective symptom testimony.

#### 4 *4. Inconsistent with Childcare Activities*

5 The ALJ discounted Plaintiff's symptom claims as inconsistent with the  
6 ability to care for her children. Tr. 24. The ability to care for others without help  
7 has been considered an activity that may undermine claims of totally disabling  
8 pain. *Rollins*, 261 F.3d at 857. For care activities to serve as a basis for the ALJ to  
9 discredit a claimant's symptom claims, the record must identify the nature, scope,  
10 and duration of the care involved, showing that the care is hands on rather than a  
11 "one-off" care activity. *Trevizo v. Berryhill*, 871 F.3d 664, 675-76 (9th Cir. 2017).  
12 Here, the ALJ noted that Plaintiff alleged she was unable to concentrate or focus,  
13 and could not complete even basic tasks without repeated reminders or help. Tr.  
14 24 (citing Tr. 242, 247). The ALJ also observed that Plaintiff reported she was  
15 raising two small children with minimal help. Tr. 24, 56, 67, 78. The record  
16 provides additional insight into Plaintiff's childcare activities. *See* Tr. 56, 67-70  
17 (Plaintiff testified that her two children, ages two and five, were with her all day);  
18 Tr. 71 (When discussing why she does not usually leave her house, Plaintiff  
19 testified, "If I leave, then I have to take my kids with me."); Tr. 243 (Plaintiff  
20 noted on her function report that she takes care of her two children and does

1 “everything” for them); Tr. 243 (Plaintiff reported that the children’s father helped  
2 with the children three mornings a week). During the hearing, when asked to  
3 describe her “average typical day,” Plaintiff described caring for her two small  
4 children for the entire day with no help other than the children’s father putting  
5 them down for a nap in the afternoon. Tr. 68-70. Plaintiff testified that her mother  
6 helps with her children, but further stated “[e]very once in a while, if I’m having a  
7 particularly bad stretch and [the children’s father] cannot miss anymore work  
8 which is perfectly understandable, and my mom who has kidney failure can’t help  
9 today also understandable, I will call the crisis nursery and see if they can take the  
10 kids for the day too. I’ve accessed them occasionally for that.” Tr. 78. The ALJ  
11 noted that raising two small children requires considerable focus, persistence, and  
12 mental stability. Tr. 24. On this record, the ALJ properly found that Plaintiff’s  
13 childcare activities did not support her disabling subjective symptom complaints.

#### 14 *5. Improvement with Medication*

15 The ALJ discounted Plaintiff’s symptom claims because her anxiety  
16 symptoms improved with medication. Tr. 23-24. The effectiveness of medication  
17 and treatment is a relevant factor in determining the severity of a claimant’s  
18 symptoms. 20 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2017); *see Warre v.*  
19 *Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (recognizing that  
20 conditions effectively controlled with medication are not disabling for purposes of

determining eligibility for benefits) (internal citations omitted); *see also* *Tommasetti v. Astrue*, 533 F.3d 1035, 1040 (9th Cir. 2008) (A favorable response to treatment can undermine a claimant's complaints of debilitating pain or other severe limitations.). Here, the ALJ cited treatment records demonstrating that Plaintiff's anxiety symptoms improved with medication. Tr. 23-24; *see, e.g.*, Tr. 372 (Plaintiff reported significant improvement in her anxiety symptoms with medication; Plaintiff felt they were "the right dose for her," and denied any side effects; provider noted she was doing very well on her current medication regimen). The ALJ also noted that there are no records from 2018, suggesting that Plaintiff's mental health issues have not been severe enough to motivate her to seek treatment. Tr. 24. Based on this record, the ALJ reasonably concluded that Plaintiff's mental impairments, when treated with medication, were not as limiting as Plaintiff claimed. This was a clear and convincing reason to discount Plaintiff's symptom claims.

*6. Stopped Work for Reasons Unrelated to Impairments*

The ALJ found that Plaintiff's symptom complaints were less reliable because she stopped working for reasons other than her impairments. Tr. 24. An ALJ may consider that a claimant stopped working for reasons unrelated to the allegedly disabling condition in making a credibility determination. *See Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir. 2001). The ALJ noted that despite

1 Plaintiff's alleged disability onset date of July 31, 2015, testimony confirmed that  
2 Plaintiff stopped working in 2015 after being placed on bed rest due to pregnancy,  
3 and not due to her alleged disabling mental health issues. Tr. 24; *see, e.g.*, Tr. 74  
4 (Plaintiff testified that her last job ended because "I was put on bed rest. I couldn't  
5 do the barn job anymore."); Tr. 57 (When asked about earnings listed as self-  
6 employment in 2015, Plaintiff testified that the earnings record was incorrect and  
7 she actually worked in 2016 because she had just given birth at the end of 2015  
8 and "wasn't doing anything."). The ALJ reasonably concluded that this reason for  
9 stopping work undermines Plaintiff's claim that her anxiety and depression made it  
10 impossible for her to work at all. Tr. 24.

#### 11 7. *Ability to Work with Impairments*

12 The ALJ found that Plaintiff's symptom allegations were inconsistent with  
13 her ability to work part-time after her alleged disability onset date. Tr. 17, 24.  
14 Working with an impairment supports a conclusion that the impairment is not  
15 disabling. *See Drouin v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992); *see also*  
16 *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009) (seeking  
17 work despite impairment supports inference that impairment is not disabling). The  
18 ALJ indicated that Plaintiff reported she was unable to work due to mental health  
19 impairments that caused extreme limitations, including difficulty sleeping, going  
20 days without showering, an inability to make phone calls, and not leaving her



1 house unless absolutely necessary. Tr. 24, 64-66, 71-72, 246-47. The ALJ  
2 highlighted Plaintiff's allegations that trying to decide even basic things like what  
3 to make for dinner can send her into a panic attack, she is unable to complete tasks  
4 without repeated reminders or help, and she is easily distracted. Tr. 23 (citing Tr.  
5 242, 247). The ALJ cited Plaintiff's testimony that since September or October  
6 2015 she has panic attacks three to four times per week. Tr. 23, 65-66. The ALJ  
7 cited Plaintiff's reports that her impairments limit her ability to talk, hear,  
8 remember, complete tasks, concentrate, understand, follow instructions, and get  
9 along with others. Tr. 23 (citing Tr. 247). The ALJ also cited Plaintiff's  
10 allegations that she is unable to think more than one-step at a time on a daily basis,  
11 her organizational skills are completely gone, she gets overwhelmed trying to do  
12 basic things, she frequently has to stop, regroup and try again. Tr. 23 (citing Tr.  
13 242). Further, the ALJ noted that in her disability appeals report, Plaintiff reported  
14 that her psychological impairments have progressively worsened and continue to  
15 affect all aspects of daily living. Tr. 23 (citing Tr. 261). However, the ALJ  
16 observed that Plaintiff was able to work at least part-time cleaning houses after her  
17 disability onset date of July 31, 2015, which showed she was more functional than  
18 alleged. Tr. 24. At the hearing, the ALJ questioned Plaintiff about her past work  
19 cleaning someone's house. Tr. 57. Plaintiff testified that at the "tail end of 2016"  
20 she began cleaning someone's house and she was paid in cash. Tr. 57. Further,

1 Plaintiff testified that although this work began at the end of 2016, she still  
2 performs this work “every once in a while.” Tr. 57. Based on Plaintiff’s  
3 testimony, the ALJ reasonably concluded that although this work was not  
4 substantial gainful activity, Plaintiff’s ability to work at least part-time cleaning  
5 houses after her disability onset date indicated that Plaintiff’s impairments were  
6 not as severe as she alleged. Tr. 17, 24.

7 **B. Medical Opinion Evidence**

8 Plaintiff challenges the ALJ’s evaluation of the medical opinions of Morgan  
9 Liddell, M.D., and Amanda Guthmueller, LMHC. ECF No. 14 at 13-16.

10 There are three types of physicians: “(1) those who treat the claimant  
11 (treating physicians); (2) those who examine but do not treat the claimant  
12 (examining physicians); and (3) those who neither examine nor treat the claimant  
13 [but who review the claimant’s file] (nonexamining [or reviewing] physicians).”  
14 *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir. 2001) (citations omitted).  
15 Generally, a treating physician’s opinion carries more weight than an examining  
16 physician’s opinion, and an examining physician’s opinion carries more weight  
17 than a reviewing physician’s opinion. *Id.* at 1202. “In addition, the regulations  
18 give more weight to opinions that are explained than to those that are not, and to  
19 the opinions of specialists concerning matters relating to their specialty over that of  
20 nonspecialists.” *Id.* (citations omitted).

1 If a treating or examining physician’s opinion is uncontradicted, the ALJ  
2 may reject it only by offering “clear and convincing reasons that are supported by  
3 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
4 “However, the ALJ need not accept the opinion of any physician, including a  
5 treating physician, if that opinion is brief, conclusory, and inadequately supported  
6 by clinical findings.” *Bray*, 554 F.3d at 1228 (internal quotation marks and  
7 brackets omitted). “If a treating or examining doctor’s opinion is contradicted by  
8 another doctor’s opinion, an ALJ may only reject it by providing specific and  
9 legitimate reasons that are supported by substantial evidence.” *Bayliss*, 427 F.3d at  
10 1216 (citing *Lester*, 81 F.3d at 830–31. The opinion of a nonexamining physician  
11 may serve as substantial evidence if it is supported by other independent evidence  
12 in the record. *Andrews*, 53 F.3d at 1041.

13 “Only physicians and certain other qualified specialists are considered  
14 ‘[a]cceptable medical sources.’” *Ghanim*, 763 F.3d at 1161 (alteration in original);  
15 see 20 C.F.R. §§ 404.1513, 416.913 (2013).<sup>3</sup> However, an ALJ is required to  
16

---

17 <sup>3</sup> For cases filed prior to March 27, 2017, the definition of an acceptable medical  
18 source, as well as the requirement that an ALJ consider evidence from non-  
19 acceptable medical sources, are located at 20 C.F.R. §§ 404.1513(d), 416.913(d)  
20 (2013).

1 consider evidence from non-acceptable medical sources. *Sprague v. Bowen*, 812  
2 F.2d 1226, 1232 (9th Cir. 1987); 20 C.F.R. §§ 404.1513(d), 416.913(d) (2013).  
3 “Other sources” include nurse practitioners, physicians’ assistants, therapists,  
4 teachers, social workers, spouses, and other non-medical sources. 20 C.F.R. §§  
5 404.1513(d), 416.913(d) (2013). An ALJ may reject the opinion of a non-  
6 acceptable medical source by giving reasons germane to the opinion. *Ghanim*, 763  
7 F.3d at 1161.

8 *1. Dr. Liddell*

9 On February 11, 2017, Plaintiff underwent a consultative psychological  
10 examination performed by Morgan Liddell, M.D. Tr. 338-44. Plaintiff reported  
11 that she was unable to work due to an inability to stay focused and organized,  
12 further describing difficulty with setting goals, time management, and caring for  
13 herself. Tr. 339. She reported poor memory, ADHD, anxiety, and a history of  
14 unstable relationships. Tr. 339. She described her mood as “typically cheerful and  
15 laid back” but with periods of irritability and poor frustration tolerance. Tr. 339.  
16 Plaintiff endorsed sleep disturbance, poor concentration, and fatigue. Tr. 339. Dr.  
17 Liddell noted that Plaintiff arrived early for her appointment, she was observed to  
18 pull up to the clinic in an SUV with her window down, singing, she easily engaged  
19 Dr. Liddell’s secretary and completed the psychiatric evaluation questionnaire  
20 without any odd behaviors. Tr. 338. On mental status examination, Dr. Liddell

1 noted that Plaintiff presented with appropriate clothing, fair grooming and hygiene,  
2 she had good eye contact, was congenial, engaging, and cooperative, had good  
3 adherence to social conventions, and did not demonstrate any abnormal  
4 movements. Tr. 342. She had normal thought process, normal speech, normal  
5 comprehension, and denied hallucinations and delusions. Tr. 342. Plaintiff  
6 reported that her mood was “good today.” Tr. 342. Dr. Liddell found that  
7 Plaintiff’s affect was normal-appropriate during the majority of the session, and  
8 she became tearful during the mental status examination. Tr. 342. Mental status  
9 examination findings showed that Plaintiff was alert and oriented, and she  
10 demonstrated a normal memory, fund of knowledge, and attention. Tr. 342. She  
11 recalled five out of five items after a delay, was able to follow a three-step  
12 command, spelled the word “world” backwards, and demonstrated good  
13 persistence in attempting tasks. Tr. 342-43.

14 Dr. Liddell opined that Plaintiff’s mental impairments would not produce  
15 any obvious limitations in her ability to perform simple and repetitive tasks,  
16 perform detailed and complex tasks, interact with coworkers and the public, accept  
17 instructions from supervisors, perform work activities on a consistent basis, or  
18 maintain regular attendance in the workplace. Tr. 344. Dr. Liddell also opined  
19 that Plaintiff’s psychiatric symptoms would cause limitations in her ability to  
20 complete a normal workday or workweek without interruptions and manage usual

1 stress encountered in the workplace without some accommodations. Tr. 344.  
2 However, Dr. Liddell also stated that Plaintiff's psychiatric complaints were  
3 treatable with a fair likelihood of substantial recovery and were likely to improve  
4 within the next 12 months with standard care treatment. Tr. 343.

5 The ALJ gave Dr. Liddell's opinion little weight. Tr. 25. Because Dr.  
6 Liddell's opinion was contradicted by the nonexamining opinions of Patricia Kraft,  
7 Ph.D., and John Robinson, Ph.D., Tr. 90-93, 100-03, 111-13, 121-23, the ALJ was  
8 required to provide specific and legitimate reasons for discounting Dr. Liddell's  
9 opinion. *Bayliss*, 427 F.3d at 1216.

10 a. Conclusory Opinion

11 The ALJ rejected Dr. Liddell's opinion because she did not provide rationale  
12 in support of the limitations she opined. Tr. 25. The Social Security regulations  
13 "give more weight to opinions that are explained than to those that are not."  
14 *Holohan*, 246 F.3d at 1202. "[T]he ALJ need not accept the opinion of any  
15 physician, including a treating physician, if that opinion is brief, conclusory and  
16 inadequately supported by clinical findings." *Bray*, 554 F.3d at 1228.  
17 Furthermore, an ALJ may reject an opinion that does "not show how [a claimant's]  
18 symptoms translate into specific functional deficits which preclude work activity."  
19 *See Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999). In  
20 her opening brief, Plaintiff did not challenge this reason articulated by the ALJ,

1 thus it is waived. *Kim v. Kang*, 154 F.3d 996, 1000 (9th Cir. 1998) (recognizing  
2 the Court may not consider on appeal issues not “specifically and distinctly  
3 argued” in the party’s opening brief).

4 Despite Plaintiff’s waiver, the Court has reviewed the ALJ’s finding. The  
5 ALJ determined that Dr. Liddell’s opinion relied upon undefined vocational terms,  
6 finding that Dr. Liddell failed to elaborate on the extent of her opined limitations in  
7 completing a normal workday/workweek and managing usual stress. Tr. 25. The  
8 ALJ also determined that Dr. Liddell provided almost no explanation as to why  
9 Plaintiff would have such limitations. Tr. 25. Dr. Liddell also failed to explain the  
10 type of “usual stress” that would cause Plaintiff to be disabled. *Morgan*, 169 F.3d  
11 at 601. The ALJ reasonably discredited these findings as not sufficiently  
12 explained. Tr. 25. This was a specific and legitimate reason to discredit Dr.  
13 Liddell’s opinion.

#### 14 b. Internally Inconsistent

15 The ALJ found that Dr. Liddell’s opined limitations in completing a normal  
16 workday/workweek and managing usual stress were internally inconsistent with  
17 Dr. Liddell’s own examination findings. Tr. 25. Relevant factors to evaluating  
18 any medical opinion include the amount of relevant evidence that supports the  
19 opinion, the quality of the explanation provided in the opinion, and the consistency  
20 of the medical opinion with the record as a whole. *Lingenfelter v. Astrue*, 504 F.3d

1 1028, 1035 (9th Cir. 2007); *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007).  
2 Moreover, a physician's opinion may be rejected if it is unsupported by the  
3 physician's treatment notes. *See Connett v. Barnhart*, 340 F.3d 871, 875 (9th Cir.  
4 2003). The ALJ noted that Dr. Liddell's own mental status examination findings  
5 were largely intact. Tr. 25. The ALJ found that Plaintiff presented with  
6 appropriate clothing and fair grooming and hygiene. Tr. 19, 341. The ALJ noted  
7 that Dr. Liddell reported Plaintiff had good eye contact, was congenial, engaging  
8 and cooperative, had good adherence to social conventions, as shown by shaking  
9 Dr. Liddell's hand when offered and offering appropriate greetings, and did not  
10 demonstrate any abnormal movements. Tr. 19, 338, 342. The ALJ noted that Dr.  
11 Liddell found Plaintiff had normal thought process, normal speech, normal  
12 comprehension, and no hallucinations or delusions. Tr. 19, 342. Further, the ALJ  
13 cited Dr. Liddell's notation that Plaintiff reported her mood was "good today," and  
14 she noted Plaintiff's affect was normal-appropriate during the majority of the  
15 session, although she became tearful during the mental status examination. Tr. 19,  
16 342. The ALJ observed that Dr. Liddell noted Plaintiff was alert and oriented, and  
17 demonstrated a normal memory, fund of knowledge, attention and concentration.  
18 Tr. 19, 342. The ALJ noted that Dr. Liddell found Plaintiff recalled five out of five  
19 items after a delay, was able to follow a three-step command, spelled the word  
20 "world" backwards, and demonstrated good persistence in attempting tasks. Tr.



1 19, 342-43. Notably, Dr. Liddell opined that Plaintiff “would not have any  
2 obvious limitations in her ability to . . . perform work activities on a consistent  
3 basis, or maintain regular attendance in the workplace.” Tr. 344.

4 Plaintiff argues that “Dr. Liddell would have based his opinion on  
5 [Plaintiff’s] medical history of mental problems and upon his observations during  
6 the evaluation.” ECF No. 14 at 15. As discussed *supra*, Plaintiff’s mental  
7 impairments and Dr. Liddell’s observations during the evaluation do not support  
8 Plaintiff’s disabling symptom claims. To the extent the evidence could be  
9 interpreted differently, it is the role of the ALJ to resolve conflicts and ambiguity  
10 in the evidence. *Morgan*, 169 F.3d at 599-600. Where, as here, evidence is subject  
11 to more than one rational interpretation, the ALJ’s conclusion will be upheld.  
12 *Burch*, 400 F.3d at 679; *Hill*, 698 F.3d at 1158 (recognizing the court only disturbs  
13 the ALJ’s findings if they are not supported by substantial evidence). The ALJ  
14 provided a specific and legitimate reason to discount Dr. Liddell’s opined  
15 limitations in completing a normal workday/workweek and managing usual stress.

16 c. Inconsistent with the Overall Record

17 The ALJ reasoned that Dr. Liddell’s opinion was not consistent with the  
18 overall record. Tr. 25. Relevant factors when evaluating a medical opinion  
19 include the amount of relevant evidence that supports the opinion and the  
20 consistency of the medical opinion with the record as a whole. *Lingenfelter*, 504

1 F.3d at 1035; *Orn*, 495 F.3d at 631. The ALJ noted that Dr. Liddell’s opinion was  
2 inconsistent with the largely benign mental status findings documented in the  
3 record. Tr. 25; *see, e.g.*, Tr. 353 (August 8, 2016: Plaintiff had an anxious mood  
4 and a fearful and anxious affect, but she was cooperative with good eye contact  
5 and normal psychomotor activity, had normal speech, she was goal directed with  
6 organized and logical thought content, her fund of knowledge was average, her  
7 insight and judgment, attention, and recent and remote memory were intact); Tr.  
8 349 (January 16, 2017: Plaintiff had an anxious mood and a fearful and anxious  
9 affect, but she was cooperative with good eye contact and normal psychomotor  
10 activity, had normal speech, congruent mood, she was goal directed with  
11 organized, logical, and linear thought content, her fund of knowledge was average,  
12 her insight and judgment, attention, and recent and remote memory were intact);  
13 Tr. 342-43 (February 11, 2017: Plaintiff had good eye contact, was congenial,  
14 engaging, and cooperative, she demonstrated coherent, logical, and linear thought  
15 process, normal speech, normal comprehension, she denied auditory and visual  
16 hallucinations and denied having any intent or plan to harm herself or others, she  
17 reported that her mood was “good today,” her affect was normal-appropriate  
18 during the majority of the session, although she became tearful during the mental  
19 status examination, she exhibited no problems with her memory or fund of  
20 knowledge, demonstrated good persistence in attempting tasks and seemed to

1 recognize failures made, and had fair insight into her overall mental health); Tr.  
2 345 (March 10, 2017: Plaintiff had an anxious mood, but she was cooperative with  
3 good eye contact, had normal speech, congruent mood, she was goal directed with  
4 no abnormal thought content, her insight and judgment were intact, and her recent  
5 and remote memory were intact); Tr. 374 (June 14, 2017: Plaintiff reported her  
6 medications were “significantly” helping her anxiety; Plaintiff was assessed with  
7 generalized anxiety disorder “doing very well on current regimen”; upon  
8 examination Plaintiff had a normal mood and affect); Tr. 377, 380 (June 21, 2017  
9 and July 11, 2017: Plaintiff had a normal mood and affect, and her behavior,  
10 judgment, and thought content were normal). Moreover, the ALJ determined that  
11 Dr. Liddell’s opinion was inconsistent with Plaintiff’s own reports of significant  
12 improvement in her anxiety with medication. Tr. 25; *see, e.g.*, Tr. 24, *see, e.g.*, Tr.  
13 372 (Plaintiff reported significant improvement in her anxiety symptoms with  
14 medication; Plaintiff felt they were “the right dose for her,” and denied any side  
15 effects; provider noted she was doing very well on her current medication  
16 regimen).

17 Plaintiff argues that the ALJ erred in weighing Dr. Liddell’s opinion because  
18 the ALJ “assigned great weight to the opinions of doctors who allegedly reviewed  
19 [Plaintiff’s] medical records at the Disability Determination Services.” ECF No.  
20 14 at 14 (citing Tr. 25, 109-13, 119-23). Plaintiff’s argument is misplaced, as the

1 ALJ gave little weight to the State agency psychologists' opinions that Plaintiff  
2 had no severe mental impairments, and the ALJ instead formulated an RFC  
3 limiting Plaintiff to unskilled work consisting of simple, routine, repetitive tasks in  
4 a static environment with few, if any, work-related changes, no strict fast paced  
5 production or time quotas, frequent, superficial interaction with coworkers and  
6 supervisors, and incidental to no contact or interaction with the public. Tr. 22, 25  
7 (citing Tr. 90-93, 100-03, 111-13, 121-23). The ALJ reasonably determined that  
8 Dr. Liddell's opinion was not consistent with the largely benign mental status  
9 findings documented in the record or with Plaintiff's own reports of significant  
10 improvement in her anxiety with medication. Tr. 25. This was a specific and  
11 legitimate reason, supported by substantial evidence, to discount Dr. Liddell's  
12 opinion.

#### 13 d. Durational Requirement

14 The ALJ discounted Dr. Liddell's assessment because it was unclear  
15 whether her opinion established a durational level of impairment. Tr. 25.  
16 Temporary limitations are not enough to meet the durational requirement for a  
17 finding of disability. 20 C.F.R. §§ 404.1505(a), 416.905(a) (requiring a claimant's  
18 impairment to be expected to last for a continuous period of not less than twelve  
19 months); 42 U.S.C. § 423(d)(1)(A) (same); *Carmickle*, 533 F.3d at 1165 (affirming  
20 the ALJ's finding that treating physicians' short-term excuse from work was not

1 indicative of “claimant’s long-term functioning”). In the opening brief, Plaintiff  
2 did not challenge this reason articulated by the ALJ, thus it is waived. *Kim*, 154  
3 F.3d at 1000.

4 Despite Plaintiff’s waiver, the Court has reviewed the ALJ’s finding. The  
5 ALJ noted that Dr. Liddell specifically stated that Plaintiff’s condition was likely  
6 to improve within the next 12 months with appropriate treatment. Tr. 25. To be  
7 disabled, an impairment must be expected to last for a continuous period of at least  
8 12 months. *See* 20 C.F.R. §§ 404.1509, 416.909; *see also* 20 C.F.R. §§ 404.1505,  
9 416.905. Here, Dr. Liddell opined that Plaintiff’s condition would likely improve  
10 with appropriate treatment within the next 12 months. Tr. 343-44. Without further  
11 clarification, Dr. Liddell’s statement could mean that Plaintiff would be impaired  
12 for the entire 12-month period. Therefore, it appears that Dr. Liddell’s opinion  
13 may have satisfied the disability durational requirement and this was not a specific  
14 and legitimate reason to discredit Dr. Liddell’s opinion. However, such error is  
15 harmless because the ALJ provided other specific and legitimate reasons,  
16 supported by substantial evidence, *see infra*, to discredit Dr. Liddell’s opinion.  
17 *Molina*, 674 F.3d at 1115.

18 2. *Ms. Guthmueller*

19 On March 10, 2018, Plaintiff’s counselor, Amanda Guthmueller, LMHC,  
20 completed a mental medical source statement. Tr. 392-97. Ms. Guthmueller noted

1 that she had provided mental health counseling to Plaintiff from October 2015  
2 through October 2016 and Plaintiff exhibited “slight if any improvement.” Tr.  
3 392. Ms. Guthmueller noted that she did not conduct any mental status  
4 examinations or have any clinical findings that demonstrated the severity of  
5 Plaintiff’s mental impairments and symptoms. Tr. 392. Ms. Guthmueller checked  
6 boxes on the mental medical source statement indicating that Plaintiff would have  
7 serious limitations in her ability to complete a normal workday or workweek  
8 without interruptions from psychologically based symptoms, perform at a  
9 consistent pace without an unreasonable number and length of rest periods, and  
10 travel in unfamiliar places. Tr. 394-95. Ms. Guthmueller checked boxes assessing  
11 that Plaintiff would be off-task five percent of the time, and would miss more than  
12 four days of work each month. Tr. 396. The ALJ gave Ms. Guthmueller’s opinion  
13 little weight. Tr. 25. Because Ms. Guthmueller was an “other source,” the ALJ  
14 was required to provide germane reasons to discount her opinion.<sup>4</sup> *Dodrill v.*  
15 *Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

---

18 <sup>4</sup> As a therapist, Ms. Guthmueller is considered an “other source” under 20 C.F.R.  
19 §§ 404.1513(d)(1), 416.913(d)(1) (2013).

1 a. “Other Source” Opinion

2 In discrediting her opinion, the ALJ noted that Ms. Guthmueller was not an  
3 acceptable medical source. Tr. 25. An ALJ must consider the testimony of lay  
4 witnesses in determining whether a claimant is disabled. *Stout v. Comm’r of Soc.*  
5 *Sec. Admin.*, 454 F.3d 1050, 1053 (9th Cir. 2006). Lay witness testimony cannot  
6 establish the existence of medically determinable impairments, but lay witness  
7 testimony is “competent evidence” as to “how an impairment affects [a claimant’s]  
8 ability to work.” *Id.*; 20 C.F.R. §§ 404.1513, 416.913; *see also Dodrill*, 12 F.3d at  
9 918-19 (“[F]riends and family members in a position to observe a claimant’s  
10 symptoms and daily activities are competent to testify as to her condition.”). If lay  
11 testimony is rejected, the ALJ ““must give reasons that are germane to each  
12 witness.”” *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996) (citing *Dodrill*,  
13 12 F.3d at 919). The fact that Ms. Guthmueller was an “other source” was not a  
14 germane reason to reject her opinion. Plaintiff asserts that because Ms.  
15 Guthmueller’s opinion was allegedly consistent with Dr. Liddell’s assessment, the  
16 ALJ was required to provide clear and convincing reasons to reject Ms.  
17 Guthmueller’s opinion. ECF No. 14 at 16. Plaintiff offers no legal authority to  
18 support this specific proposition. Although the fact that she was an other source  
19 was not a germane reason to discount her opinion, because Ms. Guthmueller was  
20 an “other source” under 20 C.F.R. §§ 404.1513(d), 416.913(d), the ALJ need only

1 have provided germane reasons for rejecting her findings. *See Molina*, 674 F.3d at  
2 1111.

3 b. Self-Report

4 The ALJ found that Ms. Guthmueller's limitations were based exclusively  
5 on Plaintiff's self-reports. Tr. 25. A physician's opinion may be rejected if it  
6 based on a claimant's subjective complaints which were properly discounted.  
7 *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001); *Morgan*, 169 F.3d at  
8 602; *Fair*, 885 F.2d at 604. "[W]hen an opinion is not more heavily based on a  
9 patient's self-reports than on clinical observations, [this] is no evidentiary basis for  
10 rejecting the opinion." *Ghanim*, 763 F.3d at 1162. As discussed *supra*, the ALJ  
11 reasonably discredited Plaintiff's symptom complaints. Moreover, the ALJ noted  
12 that Ms. Guthmueller specifically stated that a mental status examination was "not  
13 conducted," suggesting that her opinions were based exclusively on Plaintiff's self-  
14 reports. Tr. 25 (citing Tr. 392). Plaintiff argues that Ms. Guthmueller, as a  
15 counselor at Spokane Resource Group, would have been aware of Plaintiff's  
16 symptoms during her counseling sessions, and Plaintiff testified that Ms.  
17 Guthmueller was one of her counselors at Spokane Resource Group. ECF No. 14  
18 at 15; Tr. 47, 73. Plaintiff asserts that Ms. Guthmueller would have reviewed the  
19 findings and notes of several different counselors at Spokane Resource Group, and  
20 therefore, her diagnosis and opinion was not based on Plaintiff's self-report, but



1 instead was based on the counseling records as a whole. ECF No. 14 at 15-16.  
2 However, given Ms. Guthmueller's limited evaluation, absence of a mental status  
3 examination or any clinical findings, no record review, and minimal explanation,  
4 the ALJ reasonably concluded that Ms. Guthmueller relied on Plaintiff's  
5 discredited symptom complaints in assessing serious limitations. This was a  
6 germane reason for discounting Ms. Guthmueller's opinion.

7 c. Internally Inconsistent

8 The ALJ found that Ms. Guthmueller's opinion that Plaintiff would be  
9 absent more than four days a month was internally inconsistent with Ms.  
10 Guthmueller's own assessment of Plaintiff's mild limitations in other areas. Tr.  
11 25. Relevant factors to evaluating any medical opinion include the amount of  
12 relevant evidence that supports the opinion, the quality of the explanation provided  
13 in the opinion, and the consistency of the medical opinion with the record as a  
14 whole. *Lingenfelter*, 504 F.3d at 1035; *Orn*, 495 F.3d at 631. Moreover, a  
15 physician's opinion may be rejected if it is unsupported by the physician's  
16 treatment notes. *See Connett*, 340 F.3d at 875. In the opening brief, Plaintiff did  
17 not challenge this reason articulated by the ALJ, thus it is waived. *Kim*, 154 F.3d  
18 at 1000.

19 Despite Plaintiff's waiver, the Court has reviewed the ALJ's finding. The  
20 ALJ noted that Ms. Guthmueller opined Plaintiff would be absent more than four

1 days a month, yet indicated only mild limitations in many other areas, which was  
2 inconsistent with an individual who was so debilitated that they would not be able  
3 to attend work for multiple days a month. Tr. 25; *see, e.g.*, Tr. 394 (Ms.  
4 Guthmueller assessed Plaintiff as having an unlimited or very good ability to  
5 maintain regular attendance and be punctual within customary, usually strict  
6 tolerances, and to sustain an ordinary routine without special supervision). This  
7 was a germane reason for the ALJ to discount Ms. Guthmueller's opinion that  
8 Plaintiff would miss work more than four days per month. Tr. 25.

9 d. Inconsistent with Overall Record

10 The ALJ reasoned that Ms. Guthmueller's opinion was not supported by the  
11 record as a whole. Tr. 25. Relevant factors when evaluating a medical opinion  
12 include the amount of relevant evidence that supports the opinion and the  
13 consistency of the medical opinion with the record as a whole. *Lingenfelter*, 504  
14 F.3d at 1035; *Orn*, 495 F.3d at 631. The ALJ noted that although Ms. Guthmueller  
15 stated that during Plaintiff's treatment from October 2015 to October 2016,  
16 Plaintiff had "slight if any improvement," Tr. 392, records during the same time  
17 frame showed Plaintiff was "doing a lot better" and had continued improvement in  
18 her anxiety and depression. Tr. 25; *see, e.g.*, Tr. 316 (May 18, 2016: Plaintiff  
19 reported she felt like she was "doing a lot better"); Tr. 352-53 (August 8, 2016:  
20 Plaintiff reported "I am doing better in some ways but I think I might be getting

1 some depression”); Tr. 356-57 (July 8, 2016: Plaintiff reported that overall she had  
2 been feeling “pretty good.”). The ALJ also determined that Ms. Guthmueller’s  
3 opinions were inconsistent with the benign mental status examination findings and  
4 demonstrated functional abilities throughout the record, showing that Plaintiff was  
5 engaging and cooperative, had normal mood and affect, and presented with good  
6 eye contact and normal speech, normal or intact memory, attention, focus, and  
7 concentration. Tr. 25, 342, 345, 349, 353, 357, 374, 377, 380. The ALJ  
8 reasonably considered that these findings directly contradicted Ms. Guthmueller’s  
9 assessment that Plaintiff had serious limitations in completing a normal workday or  
10 workweek without interruptions from psychologically based symptoms,  
11 performing at a consistent pace, and traveling in unfamiliar places, when  
12 discounting her opinion. Tr. 25.

13 Plaintiff argues that Ms. Guthmueller’s opinion would have been based on  
14 her counseling records as a whole, and her opinion was consistent with the opinion  
15 of Dr. Liddell. ECF No. 14 at 16. These assertions do not undermine the ALJ’s  
16 conclusion. As discussed *supra*, the ALJ reasonably determined that Dr. Liddell’s  
17 own mental status examination findings were largely intact and inconsistent with  
18 the largely benign mental status findings documented in the record, and with  
19 Plaintiff’s own reports of significant improvement in her anxiety with medication.  
20 Tr. 25. This was a germane reason to discount Ms. Guthmueller’s opinion.

e. Inadequate Explanation

The ALJ also discounted Ms. Guthmueller's opinion because it was only a check-box form with little explanation for the assessed limitations. Tr. 25. A medical opinion may be rejected by the ALJ if it is conclusory or inadequately supported. *Bray*, 554 F.3d at 1228. For this reason, individual medical opinions are preferred over check-box reports. *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); *Murray v. Heckler*, 722 F.2d 499, 501 (9th Cir. 1983). An ALJ may permissibly reject check-box reports that do not contain any explanation of the bases for their conclusions. *Crane*, 76 F.3d at 253. However, if treatment notes are consistent with the opinion, a conclusory opinion, such as a check-the-box form, may not automatically be rejected. *See Garrison*, 759 F.3d at 1014 n.17; *see also Trevizo*, 871 F.3d at 667 n.4 ("[T]here is no authority that a 'check-the-box' form is any less reliable than any other type of form"). Here, the ALJ noted that Ms. Guthmueller's opinion consisted of a check-box form, with little explanation to support the degree of limitation opined. Tr. 25 (citing Tr. 392-97). The ALJ observed that, while Ms. Guthmueller treated Plaintiff for over a year, she had not treated Plaintiff not since October 2016 and her opinion was rendered almost a year and a half later, in March 2018. Tr. 392, 397. The ALJ noted that although Ms. Guthmueller saw Plaintiff for 37 one-hour sessions from during her year of treatment, there were no treatment records from Ms. Guthmueller in the record and

1 thus, there were no objective findings from Ms. Guthmueller to corroborate her  
2 opinion. Tr. 25. Given the lack of explanation, this was a germane reason to reject  
3 Ms. Guthmueller's opinion.

#### 4 **CONCLUSION**

5 Having reviewed the record and the ALJ's findings, the Court concludes the  
6 ALJ's decision is supported by substantial evidence and free of harmful legal error.  
7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

9 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is  
10 **GRANTED**.

11 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

12 The District Court Executive is directed to file this Order, provide copies to  
13 counsel, and **CLOSE THE FILE**.

14 DATED March 23, 2020.

15 s/Mary K. Dimke  
16 MARY K. DIMKE  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20